

REMARKS

Responsive to the Office Action mailed March 17, 2009, Applicants provide the following. The claims have been amended without adding new matter. Claims 1 and 5 have been amended. Claims 16-20 have been added without adding new matter. Therefore, Twenty (20) claims remain pending in the application: Claims 1-20. Reconsideration of claims 1-15 in view of the amendments above and remarks below and consideration of new claims 16-20 is respectfully requested.

By way of this amendment, Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues, it is respectfully requested that the Examiner telephone the undersigned at (805) 781-2865 so that such issues may be resolved as expeditiously as possible.

Summary of Applicant Initiated Examiner Interview

1. Per 37 CFR § 133(b), the following is a brief summary of the Examiner interview conducted June 16, 2009 via telephone between Steven M. Freeland, Attorney, Shirin Tefagh, Attorney, Examiner Joshua D. Taylor and Examiner Joseph Hirl.

No Exhibits were shown, and no demonstrations were conducted. The rejections to claims 1-9 under 35 U.S.C. 101 and specifically of independent claims 1 and 5 was discussed. Additionally, the rejections to claims 1-15 under 35 U.S.C. 102 under U.S. Publication No. 2003/0126600 to Heuvelman were discussed.

Initially, the 101 rejection of claims 1-9 and specifically independent claims 1 and 5 was discussed. The Examiner stated that per Bilski, Applicants must tie their claim to a particular machine, and potential amendments were discussed to overcome the rejection under 35 U.S.C. 101. Next, the rejection of claims 1-15 as being anticipated by Heuvelman was discussed. Applicants' representatives argued that Heuvelman discloses providing a personalized channel for a user based on the user's profile, and does not describe "using the characterizing descriptors as correspond to the selected discrete selectable item of data to provide at least one selection criterion." The Examiner stated that Heuvelman discloses providing a program to the user based on several criteria one of which is the recent history of content watched. Applicants' representative then pointed out that a

recent history did not refer to content currently being displayed, and instead, refers to content viewed some time in the past. However, the Examiner stated that under the broadest interpretation the history might refer to the content being watched.

The interview ended with the Applicants' representatives and the Examiner agreeing that the discussed amendments would overcome the rejection to claims 1-9 under 35 U.S.C. 101. No agreement was reached with respect to the rejection to claims 1-15 under 35 U.S.C. 102.

Claim Rejections - 35 U.S.C. §101

3. Claims 1-9 stand rejected under 35 U.S.C. § 101, as being directed to non-statutory subject matter. Applicants respectfully traverse this rejection and submit that claims 1 and 5 have been amended to include language reciting "a processor-based system for performing a method." As such, these claims are performed by a processor and are not merely mental processes. Therefore, Applicants respectfully submit that the rejection to claims 1-9 is overcome, and request that the rejections be withdrawn.

Claim Rejections - 35 U.S.C. §102

4. Claims 1-15 stand rejected under 35 U.S.C. § 102(e), as being anticipated by U.S. Patent No. 2003/0126600 (Heuvelman). Applicants respectfully traverse these rejections and submit that Heuvelman fails to describe or suggest each limitation as recited in claims 1-15.

For example, with regard to independent claim 1, Heuvelman fails to describe or suggest "while displaying a selected discrete selectable item of data: using the characterizing descriptors as correspond to the selected discrete selectable item of data to provide at least one selection criterion." The Examiner, in asserting that Heuvelman describes this limitation, refers to paragraph 0049 and 0015 of Heuvelman. Applicants respectfully submit that the cited portions of Heuvelman, as well as the reference as a whole, do not describe using the characterizing descriptors of a selected discrete selectable item while displaying the selected discrete selectable item to provide at least one selection criterion.

Paragraph 0015 of Heuvelman discloses that "the system may take into account a variety of criteria in order to prepare the recommendation ... e.g. ... a recent history of content

consumed,” while paragraph 0049 recites “the system preferably should have knowledge on the progress on the content currently being consumed by the user” (emphasis added). The recent history of content refers to the content consumed, and therefore, does not refer to content currently displayed. The Examiner, during the interview summarized above, stated that the language could be interpreted to refer to content being currently displayed. However, looking at the two cited portions it is clear that while paragraph 0049 refers to content currently being consumed, paragraph 0015 refers to history of content consumed, which further emphasizes that the history refers to content already consumed and does not refer to “content currently being consumed.” Furthermore, the use of the term history further highlights that the criteria used does not refer to content being currently consumed and instead refers to content previously consumed. Furthermore, paragraph 0049 refers to progress data for the content being currently consumed and does not refer to criteria for making the recommendation (see para. 0049). As such, Applicants respectfully submit that the Heuvelman reference fails to describe or suggest each limitation as recited in at least independent claim 1, and thus claim 1 is not anticipated by the Heuvelman reference. As such, Applicants respectfully request that the rejection be withdrawn.

Independent claims 5 and 10 recite similar language, and as such are also not anticipated by the Heuvelman reference. Thus, Applicants respectfully request that the rejection to independent claims 5 and 10 be withdrawn.

Additionally, independent claim 5 recites:

“identifying at least another one of the plurality of discrete selectable items of audio/visual content for which at least one characterizing descriptor as individually corresponds to the at least another one of the plurality of discrete selectable items of audio/visual content is similar to a characterizing descriptor of the selected discrete selectable item of audio/visual content.”

The portion of Heuvelman that the Examiner cites as describing this reference specifically recites, “if the user just watched the news then it typically makes less sense to offer him/her similar news from another source” (Heuvelman, para. 0015). As such, it appears that Heuvelman teaches away from “identifying at least another one of the plurality of discrete selectable items ... for which at least one characterizing descriptor ... is similar to a characterizing descriptor of the selected discrete selectable item of audio/visual content,” as recited in claim 5 (emphasis added). More specifically, it appears

that the history of content consumed in Heuvelman is used to steer away from recommending content that is similar to content that was previously consumed. As such, the cited portions of Heuvelman, as well as the reference as a whole, teach away from what is recited in claim 5. As such, Heuvelman clearly does not teach and instead teaches away from “identifying at least another one of the plurality of discrete selectable items ... for which at least one characterizing descriptor ... is similar to a characterizing descriptor of the selected discrete selectable item of audio/visual content,” as recited in claim 5. As such, Applicants respectfully submit that claim 5 is not anticipated by Heuvelman for this additional reason.

Claims 2-4, 6-9 and 12-15 depend from independent claims 1, 5 and 10. As such, these claims are also not anticipated by Heuvelman at least for the reasons described above with respect to claims 1, 5 and 10, and further due to their dependence upon allowable claims. As such, Applicants respectfully request that the rejections to these claims be withdrawn.

New Claims

5. Newly submitted claims 16-20 are believed to be allowable because they are directed to that which is not shown or suggested in the prior art.

Support for new claims 16-18 can be found at least at paragraph 0032 of Applicants' published application (US 2005/0108750).

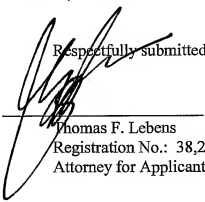
Support for new claims 19-20 can be found at least at paragraph 0037 of Applicants' published application.

CONCLUSION

Applicants submit that the above amendments and remarks place the pending claims in a condition for allowance. Therefore, a Notice of Allowance is respectfully requested.

Respectfully submitted,

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Thomas F. Lebens
Registration No.: 38,221
Attorney for Applicants

Address All Correspondence To

FITCH, EVEN, TABIN & FLANNERY
120 So. LaSalle Street, Ste. 1600
Chicago, IL 60603

Direct Telephone Inquiries To

Thomas F. Lebens
(805) 781-2865
San Luis Obispo, California Office of
FITCH, EVEN, TABIN & FLANNERY